HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. V.SEETHAPATHY

Writ Appeal No. 843 of 2005

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Between:

The A.P.State Federation of Coop. Spinning Mills Limited,
(A.P.SPINFED), 5th Floor, B.R.K.R Bhavan, Hyderabad,
rep. by its Liquidator

……Appellant

And

M. Someswara Rao and another

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri K.Rajanna

Counsel for Respondent No.1 : Sri V.Ramu representing
Sri S.Ravindranath

August 07, 2006

Per G.S. SINGHVI, CJ

Feeling aggrieved by order dated 20-12-2004 passed by the learned Single Judge in Writ Petition No.16297 of 1999, Andhra Pradesh State Federation of Cooperative Spinning Mills Limited (for short 'the Federation') has filed appeal under Clause 15 of the Letters Patent.

Although the case has been listed today for consideration of Review WAMP No.1683 of 2006 filed by the appellant for review of order dated 26-6-2006 passed in WAVMP No.126 of 2006 in WAMP No.1601 of 2005 in Writ Appeal No.843 of 2005, learned counsel for the parties made an agreed statement that the Court may dispose of the main appeal.

In the writ petition filed by him, the petitioner (respondent No.1 herein) questioned communication dated 30-7-1999 whereby his claim for being given the benefit of Voluntary Retirement Scheme was rejected and his services were discontinued by paying a sum of Rs.34,046/- towards notice period.

The facts of the case show that respondent No.1 joined service as Supervisor in Rajahmundry Cooperative Spinning Mills Limited in August, 1974. He was promoted as Assistant Spinning Master on 22-2-1979 and then as Deputy Spinning Master with effect from 2-8-1985. In1990, he was appointed as Spinning Master on contract basis for a period of three years commencing from 31-7-1990. He claims to have been confirmed on the post of Spinning Master and continued in that capacity till the termination of service with effect from 30-7-1999.

Respondent No.1 challenged the termination of his service on several grounds set out in the writ petition including the one that the employer had grossly erred by denying him the benefit of Voluntary

Retirement Scheme formulated by the State Government.

The learned single Judge allowed the writ petition by a short order dated 20-12-2004 by relying on judgment dated 31-4-1997 rendered by the Division Bench in Writ Appeal No.1071 of 1993 and declared that the writ petitioner (respondent No.1 herein) is entitled to continue in service with all service benefits, as per the terms of contract.

The appellant challenged the order of the learned Single Judge mainly on the ground that he could not have ordered reinstatement of respondent No.1 because the latter had been appointed as Spinning Master on contract basis and his service was terminated in accordance with Clause 11 of the appointment order dated 31-7-1990.

Learned counsel for the appellant argued that the order under challenge is liable to be set aside because the judgment of the Division Bench in **P.V.Swaminathan Vs. A.P State Federation of Cooperative Spinning Mills Limited**, Writ Appeal No.1071 of 1993, which constitutes the basis of the direction given by the learned Single Judge for reinstatement of respondent No.1, had been modified by the Supreme Court in Civil Appeal No.5037 of 1997, **A.P State Federation of Cooperative Spinning Mills Limited and another vs. P.V. Swaminathan** decided on
31-01-2001. He submitted that while approving the reasons recorded by the Division Bench for nullifying the termination of **P.V. Swaminathan** with effect from 10-6-1003, the Supreme Court made it clear that he will not be entitled to reinstatement.

Learned counsel for respondent N.1 says that on the date of decision of the writ petition and disposal of WAVMP No.126 of 2006, he was not aware of the fact that the judgment of the Division Bench in **P.V.Swaminathan**'s case (supra) had been modified by the Supreme Court and, therefore, the same could not be brought to the notice of the Court.

We have given our serious thought to the entire matter. A reading of order dated 31-1-2001 passed by the Supreme Court in Civil Appeal No.5037 of 1997, **A.P. State Federation of Cooperative Spinning Mills Limited and another v. P.V.Swaminathan**, the Supreme Court, even while upholding the declaration of invalidity made by the Division Bench qua the action of the employer, did not approve the direction for reinstatement and ordered that the respondent be paid pecuniary benefits. This is evinced from the last two paragraphs of the order of the Supreme Court, which are extracted below:

> "In fact, the letter of the Commissioner of Handlooms and Director of Handlooms and Textiles dated:19-05-1993 was the foundation of the employer to terminate the services and as such the Division Bench of Andhra Pradesh High Court was justified in holding that the order of termination is based upon on misconduct, though on the face of it, it is innocuous in nature. We, therefore, do not find any infirmity with the said conclusion of the Division Bench of the Andhra Pradesh High Court requiring our interference.
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> The period of appointment of the respondent being for a period of 3 years, it stood expired on 06-08-1994. The order of termination was passed on 10-06-1993. Notwithstanding the conclusion that the order of termination is vitiated, the respondent cannot seek enforcement of reinstatement by way of a Mandamus but all the same he would be entitled to all his benefits flowing from the terms of appointment for the period 10-06-1993 to 06-08-1994. The appellant Federation is therefore directed to pay the necessary pecuniary benefits flowing from this direction of ours to the respondent within a period of 3 months from today after deducting the wages for 3 months which had been paid to him while passing the order of termination in lieu of notice. The appeal is disposed of accordingly."

In view of the above, the appeal deserves to be allowed because the order under challenge was passed by the learned Single

Judge without being apprised of the fact that the judgment of the Division Bench in **P.V. Swaminathan**'s case had been modified by the Supreme Court. We are sure that if the order of the Supreme Court had been brought to the notice of the learned Single Judge, then he would have adjudicated the writ petition on merits after examining the rival pleadings and contentions and would not have disposed of the writ petition simply by relying on the judgment of the Division Bench.

We would have ourselves adjudicated on the merits of the prayer made by respondent No.1 in the writ petition, but refrain from adopting that course because adjudication by the Division Bench would deprive either of the parties the right to prefer appeal against the order of the Single Bench.

In the premise aforesaid, writ appeal is allowed, the order of the learned Single Judge is set aside with the direction that Writ Petition No.16297 of 1999 be listed for fresh adjudication before an appropriate Single Bench as per roaster.

As a sequel to disposal of the main appeal, Review WAMP No.1683 of 2006 filed by the appellant is disposed of as infructuous.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY,J

07-08-2006
svs